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10/758,186	01/15/2004	Leonard Fuchs	30051/39757	5366

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MARSHALL, GERSTEIN & BORUN LLP
233 SOUTH WACKER DRIVE
6300 SEARS TOWER
CHICAGO, IL 60606-6357

EXAMINER
LEFF, STEVEN N

ART UNIT	PAPER NUMBER
1794	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _13 March 2009_.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _10-18_ is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) _10-18_ is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All   b)☐ Some * c)☐ None of:
        1.☐ Certified copies of the priority documents have been received.
        2.☐ Certified copies of the priority documents have been received in Application No. _____.
        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.
4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR

1.17(e), was filed in this application after final rejection. Since this application is eligible for continued

examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the

finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's

submission filed on 3/12/09 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set

forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966),

that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are

summarized as follows:

1.   Determining the scope and contents of the prior art.
2.   Ascertaining the differences between the prior art and the claims at issue.
3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating obviousness
      or nonobviousness.

- Claims 10-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knepler (5375508)

    in view of Neumann (4360128).

    Knepler et al. teach a method for controlling a drink preparation machine

    (abstract). More specifically Knepler et al. teach a drink preparation machine configured

    to prepare each of a plurality of different drink types in one or more different quantities

    (col. 9 lines 40-45). More specifically Knepler et al., teach that the method comprises

    defining a plurality of different drink units, each drink unit corresponding to a particular

    quantity (col. 9 line 55-57) of a particular drink type (col. 9 lines 37-60), where it is noted

that the claim only requires one different drink type with respect to a plurality of different quantities.

Knepler et al. continue by receiving a selection of a drink unit (col. 9 lines 42-48), withdrawing hot water for the selected drink unit from a common hot water source (col. 3 lines 65-67), wherein supply water enters the hot water source through an inlet (col. 4 lines 1-2) and the hot water is withdrawn from the hot water source through an outlet (col. 4 lines 30-33), and wherein the temperature of the hot water emanating from the outlet is greater than the temperature of the supply water entering the hot water source through the inlet (col. 4 lines 17-19). Knepler et al. continue by measuring a water level in the hot water source (col. 4 lines 20-22), measuring one or both of a pressure and a temperature within the hot water source (col. 4 lines 22-25), and determining a performance status of the hot water source based on the measured level within the hot water source, the measured pressure within the hot water source, the measured temperature of the water within the hot water source, or some combination of two or more of the measured level, temperature, and pressure (col. 4 lines 25-30).

Knepler et al. further teach controlling the hot water withdrawal by enabling the hot water withdrawal for all of the plurality of different drink units at a predetermined full performance status of the hot water source (col. 10 lines 66-69, col. 4 lines 67-68-col. 5 lines 1-2), disabling the hot water withdrawal for all of the plurality of different drink units at a predetermined zero performance status of the hot water source (col. 10 lines 61-63) and disabling the hot water withdrawal for at least one drink unit occurs if the performance status falls below a threshold value (col. 10 lines 66-69). Knepler et al further teach that full performance status comprises a performance range (col. 8 lines 49-53), establishing a performance withdrawal value for each of the different drink units, and deducting this performance withdrawal value from the performance status with each withdrawal (col. 4 lines 44-46). Knepler et al. continue by heating up the hot water synchronously with the withdrawal (col. 10 lines 58-66), determining the performance status of the hot water source prior to controlling the hot water withdrawal by determining a level of the water in a boiler (col. 4 lines 45-47), and/or the temperature therein (col. 10 lines 58-66).

However Knepler et al. are silent with respect to disabling the hot water withdrawal for at least one predetermined drink unit of the plurality of different drink

units and enabling the hot water withdrawal for at least one predetermined drink unit of the plurality of different drink units at a predetermined partial performance status of the hot water source such that the partial performance status comprises at least one performance range.

Neumann teaches a beverage dispenser which is responsive to a reservoir quantity (abstract). More specifically Neumann teaches a reservoir sensor which is outputted to control a level indicating display and to disable the reservoir heater when the reservoir is empty (col. 2 lines 3-6, col. 4 lines 1-30). Neumann further teaches a selector switch which is associated with different quantities of the beverage to be dispensed as a function of the present level of the tank (col. 5 lines 26-41) thus providing a controlled amount of dispensing of different desired quantities since the control determines whether the storage pan is filled to at least the desired level (col. 5 lines 6-13). With respect to enabling the hot water withdrawal for at least one predetermined drink unit of the plurality of different drink units at a predetermined partial performance status of the hot water source such that the partial performance status comprises at least one performance range, it is noted that said partial performance range is taken with respect specifically to Neumann teaching the sensor arrangement which is for signaling the present level of the reservoir tank, and specifically the zone corresponding to which the storage pan is filled (col. 5 lines 20-24).

Thus, although Knepler et al. do not teach enabling hot water withdrawal for at least one predetermined drink unit of the multiple number of different drink units at a predetermined partial performance status of the hot water source, Knepler et al. do teach a water temperature sensor (col. 4 line 20), a level sensor (col. 4 line 23), and the desire to provide different batch sizes with respect to beverages (col. 9 lines 37-60). Therefore since Neumann teaches dispensing of a beverage from a brewer which is not dependant upon the level in the storage reservoir (col. 1 lines 48-50) and further teaching the zone corresponding to which the storage pan is filled (col. 5 lines 20-24) thus enabling the hot water withdrawal for at least one predetermined drink unit of the plurality of different drink units at a predetermined partial performance status of the reservoir, one of ordinary skill in the art would have been motivated to combine the teachings and taught enabling hot water withdrawal for at least one predetermined drink unit of the multiple number of different drink units at a predetermined partial performance status since the brewer

continues to brew all the way to depletion of the water in the hot water tank as opposed to
only being capable of brewing one batch which is dependant upon the "fullness" of the
reservoir as is taught by Neumann (col. 5 lines 19-25, col. 1 lines 52-54).

In addition, since Knepler et al. teach the desire to provide a method of
dispensing hot beverages using a temperature and liquid level sensor, and further since
Knepler et al. teach the desire to not only provide different sized batches but further to
provide the ability to dispense different liquids of different sizes (col. 9 lines 42-45) using
a cpu, it would have been obvious to one of ordinary skill in the art at the time of the
invention to teach a partial performance status which would provide the advantage of
allowing the brewer to brew a "half" volume of the batch as opposed to the "full" volume
of the batch as is desired by Knepler et al. (col. 9 lines 45-57) thereby continuing to allow
brewing of smaller batches when the amount of hot water available is not sufficient to
brew an "extra large" batch thus increasing profits since the brewer continues to brew all
the way to depletion of the water in the hot water tank as opposed to only being capable
of brewing one large batch as is taught by Neumann (col. 5 lines 19-25, col. 1 lines 52-
54).

Further, since design incentives and market forces provide a reason to make an
adaptation, where the recitation of specific programming logic with respect to a cpu and a
specific type of sensor, as is taught by Knepler et al., and Neumann, is a result of
application of the prior art in a predictable manner since all the claimed elements were
known in the prior art and one skilled in the art could have substituted the sensor
mechanism as is taught by Knepler et al. with that of Neumann with no change in their
respective functions, thus yielding predictable results to one of ordinary skill in the art at
the time of the invention. Therefore it would have further been obvious to provide a
partial performance operating range since combining the two methods, each of which is
taught by the prior art to be useful for the same purpose of dispensing of an infusible
beverage, flows logically from their having been individually taught in the prior art (see
MPEP 2144.06), and since MPEP 2144.07 states that the selection of a known process
based on its suitability for its intended use supports a prima facie obviousness
determination thereby in the instant case providing increased profits since the brewer
continues to dispense all the way to depletion as is taught by Neumann (fig. 2).

- Claims 10-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knepler (5375508) in view of d'Alayer de Costemore (4468406).

Knepler is taken as above however Knepler is silent with respect to disabling the hot water withdrawal for at least one predetermined drink unit of the plurality of different drink units and enabling the hot water withdrawal for at least one predetermined drink unit of the plurality of different drink units at a predetermined partial performance status of the hot water source such that the partial performance status comprises at least one performance range.

d'Alayer de Costemore teaches a microprocessor controlled brewing apparatus (abstract) for multiple different types of drinks (col. 3 lines 47-48). More specifically d'Alayer de Costemore teaches a cpu which is programmed to shut-off the water flow in the event the complete brewing cycle can not be accomplished, i.e. disable the hot water withdrawal for at least one predetermined drink unit (a full batch) of the plurality of different drink units. d'Alayer de Costemore further teaches that the hot water is withdrawn all the way to depletion regardless of the reservoirs level, i.e. enabling the hot water withdrawal for at least one predetermined drink unit of the plurality of different drink units at a predetermined partial performance status of the hot water source such that the partial performance status comprises at least one performance range (col. 4 lines 55-69). It is noted that the performance range is the number of cups which are brewed prior to the reservoir emptying.

Thus, although Knepler et al. do not teach enabling hot water withdrawal for at least one predetermined drink unit of the multiple number of different drink units at a predetermined partial performance status of the hot water source, Knepler et al. do teach a water temperature sensor (col. 4 line 20), a level sensor (col. 4 line 23), and the desire to provide different batch sizes with respect to beverages (col. 9 lines 37-60). Therefore since d'Alayer de Costemore teaches dispensing of a beverage from a brewer which is not dependant upon the level in the storage reservoir (col. 4 lines 57-68) and further teaching the zone corresponding to which brewing takes place regardless of the tank not being completely filled prior to brewing (col. 4 lines 57-68), i.e. enabling the hot water withdrawal for at least one predetermined drink unit of the plurality of different drink units at a predetermined partial performance status of the reservoir, one of ordinary skill in the art would have been motivated to combine the teachings and taught enabling hot

water withdrawal for at least one predetermined drink unit of the multiple number of different drink units at a predetermined partial performance status since the brewer continues to brew all the way to depletion of the water in the hot water tank as opposed to only being capable of brewing one batch which is dependant upon the "fullness" of the reservoir as is taught by d'Alayer de Costemore (col. 4 lines 57-68).

In addition, since Knepler et al. teach the desire to provide a method of dispensing hot beverages using a temperature and liquid level sensor, and further since Knepler et al. teach the desire to not only provide different sized batches but further to provide the ability to dispense different liquids of different sizes (col. 9 lines 42-45) using a cpu, it would have been obvious to one of ordinary skill in the art at the time of the invention to teach a partial performance status which would provide the advantage of allowing the brewer to brew a "half" volume of the batch as opposed to the "full" volume of the batch as is desired by Knepler et al. (col. 9 lines 45-57) thereby continuing to allow brewing of smaller batches when the amount of hot water available is not sufficient to brew an "extra large" batch thus increasing profits since the brewer continues to brew all the way to depletion of the water in the hot water tank as opposed to only being capable of brewing one large batch as is taught by d'Alayer de Costemore (col. 4 lines 57-68).

Further, since design incentives and market forces provide a reason to make an adaptation, where the recitation of specific programming logic with respect to a cpu and a specific type of sensor, as is taught by Knepler et al., and Neumann, is a result of application of the prior art in a predictable manner since all the claimed elements were known in the prior art it would have further been obvious to provide a partial performance operating range since combining the two methods, each of which is taught by the prior art to be useful for the same purpose of dispensing of an infusible beverage, flows logically from their having been individually taught in the prior art (see MPEP 2144.06), and since MPEP 2144.07 states that the selection of a known process based on its suitability for its intended use supports a prima facie obviousness determination thereby in the instant case providing increased profits since the brewer continues to dispense all the way to depletion as is taught by d'Alayer de Costemore (col. 4 lines 57-68).

Response to Arguments

With respect to applicants argument that Knepler does not teach receiving a selection which corresponds to a plurality of different drink types, it is noted that the feature upon which applicant relies is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In addition, it is noted that MPEP 2111.02 which states that "if the body of a claim fully and intrinsically sets forth all the limitations of the claimed invention, and the preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention's limitations, then the preamble is not considered a limitation and is of no significance to claim construction".

It is the examiner's position that the preamble does not state any distinct definition of any of the claimed invention's limitations and further that the purpose or intended use, i.e. configured to prepare a plurality of different drink types recited in the present claims does not result in a structural difference between the presently claimed invention and the prior art. It is further noted that the prior art structure is capable of performing the recited intended use since Knepler et al. specifically teach regular, decaf and flavored coffee (col. 9 lines 42-45), i.e. configured to prepare a plurality of different drink types where the different drink units are defined by claim 1 as the quantity of the particular drink type.

With respect to applicant's assertion that the changes to the volume and/or type of liquid to be dispensed are a function of the separate control unit, it is noted that Knepler specifically teaches the control unit "is associated with the brewer to control a variety of functions" (col. 3 lines 50-53) where the "separate or independent input device" is merely for manipulating these already controlled functions.

With respect to applicant's assertion that Knepler does not make determinations with respect to the specific drink types, or volumes applicant is initially urged to column 11 lines 1-2 which teaches that inadequate beverages are due to insufficient water temperatures, i.e. the temperature sensor as is described, and further with respect to the volume and temperature Knepler et al. specifically state that "water retained in the reservoir is monitored by the temperature sensor 52 which transmits a temperature value over line 62 to the control circuit 28. The control circuit 28 receives and utilizes the temperature value information from the temperature sensor 52 in controlling the brewing apparatus 20. Similarly, the level sensor 54 is coupled to the control circuit 28 via line 64 to provide level value information to the control circuit" (col. 4 lines 43-68).

With respect to applicant's assertion that Knepler does not teach the selection of a drink unit based on type and volume, applicant is urged to column 9 lines 42-61.

Conclusion

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached at (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/
Primary Examiner, Art Unit 1794

/Steven Leff/
Examiner, Art Unit 1794